IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

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CWP No. 3168 of 2007.
Date of Decision March 01, 2007.

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Jagmal Singh Versus State of Haryana and others.

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Coram: Hon'ble Mr. Justice Ashutosh Mohunta, and
Hon'ble Mr. Justice R.S.Madan, JJ.

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Present: Shri Gulab Singh Malik, Advocate, for the petitioner.

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R.S.Madan, J

The case of the petitioner is that he was appointed as a Clerk in Dayal Singh, Public School, Karnal with effect from April 01, 1994 on a starting salary of Rs. 950/- per mensum in the grade of 950-20-1150-EB-25-1500 plus dearness and other allowances as sanctioned by the School Management. On 22.07.1997, the petitioner was appointed as Head Clerk-cum-Accountant in Shaheed Udham Singh National College, Indri (Karnal) vide letter dated July 22, 1997 on the recommendation made by the Selection Committee/ Management on ad hoc / temporary basis on fixed salary. In order to fill up the said post on regular basis, the respondent-college invited applications and the petitioner applied for the same. On the recommendation made by the Selection Committee, the petitioner was appointed as Head Clerk-cum-Accountant in the grade of 1600-50-2300-EB-60-2660 plus usual allowances sanctioned by the Haryana Government from time to time on the terms and conditions as mentioned in the said letter. The petitioner assumed the charge on January 15, 1999 on the post of Head Clerk-cum-Accountant. His services on the post of Head Clerk-cum-Accountant were regularized on July 25, 2000 by the Secretary of the College.

It was on November 02, 2004 that respondent No.3 reverted the petitioner from the post of Head Clerk-cum-Accountant to the post of Clerk in the grade of Rs. 3050-4590 without giving him any opportunity of hearing. It is alleged that on May 17, 2005 a letter was issued by respondent No.1 to respondent No.2 vide which it was informed that the Governor or Haryana has accorded the sanction for taking over of Shaheed Udham Singh National College, Matak Majri, Indri (District Karnal), with immediate effect on the terms and conditions as mentioned in the said letter. Pursuant to that letter,m the Services of all the employees of the College were taken on the roll of the government and they were offered appointment as Clerk (College Cadre) in the pay scale of Rs. 3050-4590 purely on temporary and ad hoc basis for a period of six months with effect from May 17, 2005. It was on December 30, 2005 the petitioner feeling dis-satisfied with the order dated November 02, 2004 made a representation / appeal dated December 30, 2005 to respondent No.2 through proper channel and respondent No.4 forwarded the same on 30.12.2005 to respondent no.2 for necessary action.

On February 24, 2006 respondent No.2 without considering the case of the petitioner, rejected the same vide Annexure P-11.

It is pertinent to mention here that one Meena Kamboj was appointed as a Clerk in the year 1988. Her services were also dispensed with, with effect from 2.11.2004 (Annexure P-3) and she was relieved from duty. Revision filed by Smt. Meena Kumari was accepted by the Financial Commissioner and Principal Secretary to Government of Haryana, Department of Education, Haryana, Chandigarh and she was allowed to continue in service because her order was passed without following the procedure laid down in the law.

On the strength of this order, the petitioner filed Civil Writ Petition bearing No. 6511 of 2006 before the Court, which was disposed of

by the Division Bench of this Court vide order dated April 28, 2006 observing as under:-

> " The petitioner has attached with the writ petition an order dated January 17, 2006 by which the revision petition filed by one Balbir Singh who is said to be similarly situated, has been allowed. On the other hand, the representation filed by the petitioner on the same grounds has been rejected.
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> In such a situation, we are of the opinion that the alternative remedy is available to the petitioner which he is free to avail. Disposed of.
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> Sd/- S.S.Nijjar, J
> April 28, 2006 Sd/- Ajai Lamba, J

It is no where directed to any authority to consider the claim of the petitioner for the post of Head Clerk except that the petitioner would be at liberty to avail the alternative remedy which is available to him. Taking the strength from the aforesaid order of the Division Bench of this Court, the petitioner filed revision petition against the order dated November 02, 2004 passed by the respondent-Management of the College prior to the taking over of the College vide which the post of Head Clerk was converted into the post of a Clerk. The said revision petition filed by the petitioner was dismissed by the Financial Commissioner observing that there was no post of Head Clerk sanctioned by the government at the time of taking over of the College by the Govt. Therefore, the claim of the petitioner cannot be considered for the post of Head Clerk.

The learned counsel for the petitioner was unable to convince us as to how the order passed by the Financial Commissioner is against the provisions of law. It is a case where no post of Head Clerk was sanctioned by the government at the time when the college was taken over by the government of Haryana. Admittedly, the petitioner was working as a clerk at the time of taking over of the College. Without any sanctioned post of Head Clerk available in the college, a person cannot claim the promotion

as a matter of right.

The writ petition being devoid of merit, is hereby dismissed.

(R.S.Madan)
Judge

(Ashutosh Mohunta)
March 01, 2007. Judge
Malik